

By: Representatives Montgomery, Stevens

To: Insurance

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 680

1 AN ACT TO AMEND SECTION 75-63-3, MISSISSIPPI CODE OF 1972, TO
2 INCREASE THE TRUST FUND DEPOSIT REQUIRED OF ENTITIES SELLING
3 CERTAIN PRENEED FUNERAL SERVICE CONTRACTS; TO CREATE NEW CODE
4 SECTION 75-63-6, MISSISSIPPI CODE OF 1972, TO REQUIRE THE
5 REGISTRATION OF ENTITIES SELLING PRENEED AND PREARRANGEMENT
6 FUNERAL SERVICE CONTRACTS; TO AMEND SECTION 75-63-18, MISSISSIPPI
7 CODE OF 1972, TO REQUIRE ESTABLISHMENTS SELLING PRENEED,
8 PREARRANGEMENT FUNERAL SERVICE CONTRACTS AND AGREEMENTS TO FILE
9 CERTAIN ANNUAL REPORTS WITH THE DEPARTMENT OF BANKING AND CONSUMER
10 FINANCE; AND FOR RELATED PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 SECTION 1. Section 75-63-3, Mississippi Code of 1972, is
13 amended as follows:

14 75-63-3. (1) Any person, firm, corporation, association or
15 partnership entering into any such contract as the seller or the
16 party responsible for providing such services shall deposit an
17 amount of money equal to not less than eighty percent (80%) of the
18 value of such property or services as stated in the contract, into
19 a trust fund established for that purpose. Such deposit shall be
20 made not later than forty-five (45) days after the end of the
21 month in which such contract is executed; except in the event that
22 payment for the property and/or service shall be made by the
23 consumer in installments, eighty percent (80%) of each installment
24 payment shall be deposited to the trust within forty-five (45)
25 days of the last day of the month within which such payment was
26 made.

27 (2) Each initial deposit as to each contract into the trust
28 fund shall be identified by the seller by furnishing the trustee
29 with the name of the purchaser, a copy of the contract containing
30 a statement of the value of such property or services and a

31 description of the personal property and/or services to be
32 furnished or provided by the seller thereunder. Nothing therein
33 contained shall prohibit the trustee from commingling the deposits
34 in any such trust fund for purposes of the management thereof and
35 the investment of funds therein.

36 SECTION 2. The following section shall be codified as
37 Section 75-63-6, Mississippi Code of 1972:

38 75-63-6. Every business, corporation, establishment and
39 funeral home selling preneed, prearrangement funeral service
40 contracts or agreements shall be registered by application to the
41 Department of Banking and Consumer Finance. The department may
42 charge an initial and subsequent renewal registration fee; such
43 fee shall not exceed Twenty-five Dollars (\$25.00) annually. Every
44 such business shall renew its registration on January 1 of each
45 year.

46 SECTION 3. Section 75-63-18, Mississippi Code of 1972, is
47 amended as follows:

48 75-63-18. (1) Within thirty (30) days after the end of the
49 calendar or the business fiscal year, each cemetery merchandise
50 business shall file with the Department of Banking and Consumer
51 Finance an annual account, which account shall contain the
52 following information:

53 (a) The name of the business, the date of
54 incorporation, if incorporated, and the location of such business
55 or businesses;

56 (b) The amounts of sales of all property and services
57 for which payment has been made in full during the preceding
58 calendar or fiscal year;

59 (c) The amounts paid into the merchandise trust fund,
60 and the income earned therefrom during the preceding fiscal year;
61 and

62 (d) The names and addresses of the owners of the
63 business and, if incorporated, its officers and directors, and any
64 change of control which has occurred during the past fiscal or
65 calendar year.

66 (2) Within forty-five (45) days after the time by which the
67 trustee's accounting and report is required to be filed with the

68 cemetery merchandise business, as provided by Section 75-63-15,
69 the business shall file a copy of such accounting and report with
70 the department.

71 (3) As a condition to the transfer of any merchandise trust
72 fund monies from one trust institution to another, the business
73 for which such fund is maintained shall, not less than thirty (30)
74 days before the time when such transfer is to occur, file with the
75 department a written notice of intent to transfer accompanied with
76 a letter of intent to receive such trust fund monies from the
77 trust institution to which such trust fund monies are to be
78 transferred. Such fund monies shall be transferred directly from
79 the existing trust institution to the receiving trust institution.

80 (4) Before any sale or transfer of any cemetery merchandise
81 business or a controlling interest therein, an independent audit
82 of the merchandise trust fund shall be performed at the expense of
83 the seller and/or buyer or transferor and transferee and filed
84 with the department. Such audit shall be current within thirty
85 (30) days of the proposed sale or transfer.

86 (5) The department shall maintain a properly indexed book in
87 which there shall be kept, preserved and open for public
88 inspection a copy of each record, report and notice required to be
89 filed with the department under the provisions of this chapter.
90 For filing and indexing the records, reports and notices under
91 this chapter, the department shall be authorized to charge such
92 fees as are provided in Section 25-7-9 for the recording and
93 indexing of deeds.

94 (6) The department shall, upon the failure to timely receive
95 any of the records, reports or notices provided for under this
96 chapter, immediately give notice by registered letter to the owner
97 or owners of such business, or, if incorporated, its officers and
98 directors at its or their last-known address, that such records,
99 reports or notices have not been received. Failure of such
100 persons to file such records, reports or notices within fifteen

101 (15) days after such registered letter is mailed shall, in the
102 absence of clear justification or excuse, constitute a misdemeanor
103 and each owner and, if incorporated, its officers and directors,
104 shall be subject to the penalties provided for in Section
105 75-63-23.

106 (7) Whenever it reasonably appears to the department upon
107 complaint filed with the department by any purchaser, or the
108 family, legal representative or next of kin of any such purchaser,
109 of any property or services contracted for under the provisions of
110 this chapter that (a) such business is insolvent or about to
111 become insolvent; or (b) that no merchandise trust fund has been
112 established for such business or, if established, the trust fund
113 does not contain such funds as are required to be contained
114 therein, the department shall order a private audit and
115 examination of any merchandise trust fund of such business and of
116 all the books, records and papers employed in the transaction of
117 such business.

118 If such audit and examination shows that the business is
119 insolvent or is about to become insolvent or that a sufficient
120 trust fund is not established or being maintained for such
121 business, the department shall issue such orders * * * as may be
122 necessary to correct and enforce compliance with the provisions of
123 this chapter and all such other orders * * * as shall be just,
124 equitable and in the public interest, including the appointment of
125 receivers, with approval of the chancery court having
126 jurisdiction, to continue or terminate the operation of such
127 business.

128 (8) All the necessary expenses of any examination or audit
129 performed * * * under the provisions of subsection (7) of this
130 section shall be paid by the owner or owners of such business or,
131 if incorporated, its officers and directors, and in the event that
132 a sale of any such business is ordered by the department, the
133 proceeds of such sale shall first be applied to the costs expended

134 under the provisions of subsection (7) of this section.

135 SECTION 4. This act shall take effect and be in force from
136 and after January 1, 2000.